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UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 JERRY NEHL BOYLAN,

19 Defendant.  
20

No. CR 22-482-GW

GOVERNMENT'S OPPOSITION TO  
DEFENDANT'S EX PARTE APPLICATION  
TO CONTINUE TRIAL (DKT. NO. 60)

21 Plaintiff United States of America, by and through its counsel  
22 of record, the United States Attorney for the Central District of  
23 California and Assistant United States Attorneys Mark Williams,  
24 Matthew O'Brien, Brian Faerstein, and Juan Rodriguez, hereby files  
25 its Opposition to defendant JERRY NEHL BOYLAN's Ex Parte Application  
26 to Continue Trial (Dkt. No. 60).

27 This Opposition is based upon the attached memorandum of points  
28 and authorities, the files and records in this case, and such further

1 evidence and argument as the Court may permit. The government  
2 respectfully requests a hearing if the Court is inclined to grant  
3 defendant's request.

4 Dated: July 20, 2023

Respectfully submitted,

5 E. MARTIN ESTRADA  
United States Attorney

6  
7 MACK E. JENKINS  
Assistant United States Attorney  
Chief, Criminal Division

8  
9 /s/

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defense attorneys do not have a unilateral right to pick a trial date of their choosing. A defendant's rights must be balanced against the rights of the public - including victims - to a speedy trial and the rights of victims in particular to "proceedings free from unreasonable delay." 18 U.S.C. § 3771(a)(7). Here, defense counsel's sixth request for a trial continuance, which arises solely out of a purported conflict of their own making, is not supported by any good cause, especially when balanced against the momentous victims' interests in this case.

In May 2023, defense counsel requested, ex parte, the current trial date of September 26, 2023, representing that the government did not oppose that request so long as it was the "final continuance." (Dkt. No. 51.) Defense counsel's request for a "final continuance" was their fifth request to continue the trial in this matter (originally filed under case number CR 20-600-GW). In that prior ex parte application, defense counsel selected the trial date of September 26, 2023 while acknowledging that one of the defense attorneys had another trial scheduled for September 12, 2023, thus representing that they could manage both. Now the defense seeks to delay the trial yet again, for reasons they knew about in May 2023. The gamesmanship must end.

All the while, the families of the 34 deceased victims in this case have endured the following:

- On September 2, 2019, and in the days that followed, the 34 victims' families learned that their loved ones had been killed by a fire onboard the *Conception*, whose captain

(defendant) was asleep when the fire began, was the first person to jump overboard, had never trained his crew in firefighting, and had ordered his crew to jump overboard rather than attempt to save the victims.

- After defendant was indicted in December 2020, the 34 victims' families had to endure two lengthy trial continuances at defendant's request, before making plans to attend the trial on October 4, 2022 in Los Angeles (most of the victims' families are not local).
- In August 2022, the 34 victims' families learned that a video taken by one of the victims during the fire proved that the victims were alive and well - and thus could have been saved - minutes after defendant jumped overboard.
- Later in August 2022, just over one month before trial, the 34 victims' families were informed that the defense was seeking another seven-month delay, which the government opposed.
- On September 1, 2022, one day before the three-year anniversary of their loved ones' deaths, the 34 victims' families learned that this Court would dismiss the case by issuing the first judicial opinion on record requiring the government to allege gross negligence as an element of 18 U.S.C. § 1115.
- After the government re-indicted the case to allege defendant's gross negligence in October 2022, the 34 victims' families had to endure two more trial continuances at the defense's request before making plans to attend the trial on September 26, 2023.

1 Now, defendant moves to push the trial date yet again, for the  
2 sixth time. Each trial continuance has devastated the 34 victims'  
3 families. Each continuance has deflated the families' faith in the  
4 federal judicial system and their hope of attaining justice for their  
5 deceased loved ones. Nonetheless, the government reluctantly  
6 stipulated to (or did not object to) all but one of the prior  
7 continuances because good cause existed for the continuances due to  
8 the circumstances of the case and COVID-19. The defense's latest  
9 request, in contrast, lacks good cause and any reasonable basis.

10 Defendant's sixth request should be denied because: (1) the  
11 defense has had more than two-and-a-half years to prepare for trial<sup>1</sup>;  
12 (2) defense counsel has known - since January 2023 - about the trial  
13 conflict in United States v. Aggarwal et al., 15-CR-465-TJH, a  
14 conflict which they knowingly created; (3) there is no good reason  
15 why this trial and Aggarwal cannot both proceed on their current  
16 trial dates; and (4) the convenience of a new trial date for the  
17 defense does not outweigh the agony that another continuance would  
18 inflict upon the families of defendant's 34 deceased victims.

19 There is no good cause and the Court should deny the ex parte  
20 application on the papers. If the Court is inclined to grant  
21 defendant's request, the government respectfully requests the  
22 opportunity to be heard at a hearing, particularly with regard to the  
23 proposed trial date the week after Thanksgiving.

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28 <sup>1</sup> The defense's application does not even mention the original  
indictment in December 2020 and defendant's prior continuance  
requests.

1 **II. THE COURT SHOULD DENY DEFENDANT'S REQUEST FOR YET ANOTHER TRIAL**  
2 **CONTINUANCE**

3 The sole basis defense counsel asserts in support of the  
4 requisite showing of good cause for another continuance is a  
5 purported trial conflict the defense previously knew about.  
6 Specifically, one of the four defense attorneys represents that she  
7 has a trial conflict on September 12, 2023 in United States v.  
8 Aggarwal, 15-CR-465-TJH, an eight-year-old case that has had fourteen  
9 trial continuances. The problem is that the defense requested the  
10 September 26, 2023 trial date in this case knowing about the Aggarwal  
11 trial conflict. (See Dkt. No. 51, ¶ 9(c) (defendant's May 8, 2023 ex  
12 parte application to continue the trial date in this case to  
13 September 26, 2023, describing Aggarwal as a "a multi-defendant  
14 securities fraud trial scheduled for September 12, 2023").) The  
15 defense cannot complain about a conflict they knowingly created.

16 Defense counsel may very well have doubted that the Aggarwal  
17 case would go to trial on September 12, 2023, as they appear to  
18 contend in their application. (See Appl. Decl. ¶ 5.) But that is  
19 not an excuse under the Speedy Trial Act, or any other authority. It  
20 also does not constitute good cause to continue the current trial  
21 date. The defense requested the September 26, 2023 trial date in  
22 this case knowing of the possibility that the Aggarwal trial would  
23 occur on September 12, 2023. Indeed, in the January 10, 2023  
24 stipulation to continue the Aggarwal trial to September 12, 2023,  
25 defense counsel stipulated that "[t]he parties agree that absent good  
26 cause, neither the government nor the defense will request any  
27 further continuances of the trial date in this matter." (United  
28 States v. Aggarwal, 15-CR-465-TJH, Dkt. No. 637, n.1.) By signing

1 that stipulation, defense counsel also endorsed the representation  
2 that "the parties estimate that the trial in [the Aggarwal] matter  
3 will last approximately one to two weeks," (id. ¶ 3) which would  
4 allow the one defense attorney with the conflict here to join her  
5 three colleagues at the Federal Public Defender's Office when trial  
6 commences in this case on September 26, 2023.

7 Defense counsel spends a significant portion of their  
8 application seeking to distance themselves from the one-to-two week  
9 trial estimate stipulated to by all the parties in Aggarwal. (See,  
10 e.g., Appl. Decl. ¶ 4 (claiming "the government wrote" the trial  
11 estimate but failing to acknowledge defense counsel co-signed the  
12 stipulation); ¶ 6 (speculating on reasons for trial longer than two  
13 weeks); ¶ 8 ("Even if the Aggarwal trial lasted only two weeks . . .  
14 .").) Presumably, the parties' joint revised trial estimate in their  
15 most recent stipulation submitted to the court in Aggarwal reflects  
16 the best estimate of that trial's length. In fact, just last week,  
17 the government reiterated in Aggarwal that "trial in this matter is  
18 not expected to last more than one or two weeks." (United States v.  
19 Aggarwal, 15-CR-465-TJH, Dkt. No. 648 at 2-3.) But in any event,  
20 however long the Aggarwal trial ends up lasting, it does not  
21 constitute good cause for a continuance in this case given defense  
22 counsel's longstanding awareness that both trials could proceed back-  
23 to-back.

24 To be clear, the government recognizes and sympathizes with  
25 defense counsel's workloads. However, the heavy trial workloads at  
26 the Federal Public Defender's Office are not a legitimate basis for  
27 yet another continuance. Whereas prior continuances in this case  
28 were justified by the circumstances of the case and COVID-19, the

1 latest request by the defense - based on a pre-existing conflict of  
2 one of defendant's four lawyers - has no legitimate basis.

3 Defendant is represented by four highly skilled attorneys from  
4 the Federal Public Defender's Office who have all appeared and filed  
5 and/or argued substantive motions in this case.<sup>2</sup> The defendant in  
6 Aggarwal is represented by two highly skilled attorneys from the  
7 Federal Public Defender's Office. The fact that one attorney from  
8 the Federal Public Defender's Office is on both trial teams does not  
9 merit pushing the trial in this case.

10 The 34 victims' families strongly oppose another continuance.  
11 The victims' families uniformly have voiced opposition to  
12 continuances of the trial date and asked the government to convey  
13 their position to the Court. The victims' families consider each  
14 continuance to be a slap in the face, where the interests of  
15 defendant (and now, perhaps, his lawyers) are placed above their own.  
16 The Speedy Trial Act is not intended to solely benefit a defendant;  
17 the victims' families and the public have a right to a speedy trial  
18 as well, particularly in a case of such public importance as this  
19 one. Indeed, the Crime Victims' Rights Act affords victims "the  
20 right to proceedings free from unreasonable delay." 18 U.S.C.  
21 § 3771(a)(7). Defense counsel's sixth request for a continuance,  
22 borne out of a conflict of their own making, not only lacks any basis  
23 for good cause but also is wholly unreasonable in light of the  
24 substantial victims' interests at stake.

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27 <sup>2</sup> The fourth attorney from the Federal Public Defender's Office,  
28 Josh Weiss, is not yet listed on the docket in this matter but he was  
on the docket in CR 20-600-GW and he is currently involved in  
preparation for the September 26, 2023 trial, including motion  
practice and witness interviews.



1 **III. THE DEFENSE'S IN CAMERA FILING CANNOT JUSTIFY A TWO-MONTH**  
2 **CONTINUANCE**

3 The defense has yet again submitted an in camera filing,  
4 precluding the government, the victims' families, and the general  
5 public from knowing the substance of the defense's secret  
6 communications with the Court. The Court should reject the defense's  
7 tactics.

8 If the in camera filing relates to Aggarwal, the defense has  
9 known about that self-created trial conflict for months, as explained  
10 above.

11 If the in camera filing relates to the importance of the defense  
12 attorney with the trial conflict to trial preparations in this case,  
13 again, that was well known to the defense when they selected the  
14 current trial dates in both cases.

15 If the in camera filing relates to the purported need for more  
16 time to prepare for the trial in this case, it is undermined by the  
17 fact that (1) this case has been pending for more than two and a half  
18 years; (2) the four defense attorneys should have known about their  
19 trial preparations when they requested the current trial date with  
20 the understanding it would be the final continuance in this case; and  
21 (3) the defense has never explained this purported basis for a  
22 continuance to the government (and is unwilling to do so publicly).

23 **IV. THE PROPOSED TRIAL DATE IS UNJUSTIFIED**

24 If, despite the foregoing, the Court is inclined to continue the  
25 trial yet again, the government requests that the trial be continued  
26 only one or two weeks at most. There is no reason why the trial in  
27 this matter cannot begin and end in October 2023.  
28

1       The defense's proposal for a November 28, 2023 trial date is  
2 unreasonable and unwarranted. Since May 2023, defendant's four  
3 lawyers have known that they needed to keep October 2023 clear for  
4 this trial. Yet defense counsel now claims that due to their busy  
5 trial schedules this trial must be sandwiched between Thanksgiving  
6 and Christmas, a notoriously difficult time of the year for  
7 witnesses, jurors, and victims. The defense's proposed trial date  
8 would add insult to injury, particularly for the 34 victims'  
9 families, who now have repeatedly had to go through the painful  
10 process of making arrangements to attend a lengthy (and likely  
11 excruciating) trial in a city where almost none of them live, right  
12 on the heels of the Thanksgiving holiday. A delay of only a week or  
13 two would be far less devastating to the families, emotionally and  
14 logistically, than a delay of two more months.

15 **V. CONCLUSION**

16       For the foregoing reasons, the government respectfully requests  
17 that this Court deny defendant's ex parte application.  
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